

No. 05-982

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IN THE

OFFICE OF THE CLERK

***Supreme Court of the United States***

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CAYUGA INDIAN NATION OF NEW YORK, *ET AL.*,  
*Petitioners,*

v.

GEORGE PATAKI, AS GOVERNOR OF THE STATE OF  
NEW YORK, *ET AL.*,  
*Respondents.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Second Circuit**

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

In the test case considered in *Oneida Indian Nation of New York State v. County of Oneida*, 414 U.S. 661 (1974), and *County of Oneida v. Oneida Indian Nation of New York State*, 470 U.S. 226 (1985), this Court held that claims for monetary damages brought by Indian tribes for land acquired by the State of New York 200 years ago in violation of federal law – the Nonintercourse Act (25 U.S.C. § 177) and federal treaties – could proceed, in part because those claims were timely under 28 U.S.C. § 2415, the governing federal statute of limitations. This Court expressly left that result undisturbed last Term when it decided *City of Sherrill v. Oneida Indian Nation of New York*, 125 S. Ct. 1478 (2005). In addition, cases from this Court and the courts of appeals have uniformly held that the United States is not subject to laches when it enforces public rights, such as those at issue in the instant tribal land claim.

The question presented is whether the Second Circuit erred in interpreting *Sherrill* to require “dismissal *ab initio*” of claims that are timely under § 2415 and are brought by Indian tribes and the United States to obtain monetary damages from the State for lands taken in violation of the Nonintercourse Act and federal treaties.

## **PARTIES TO THE PROCEEDING**

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Second Circuit.

The petitioners here and plaintiffs-appellees/cross-appellants below are two federally recognized Indian tribes: the Cayuga Indian Nation of New York and the Seneca-Cayuga Tribe of Oklahoma.

The United States of America was an intervenor and plaintiff-appellee below.

The principal respondents here and the defendants-appellants/cross-appellees below are George Pataki, as Governor of the State of New York; the State of New York; the County of Cayuga, New York; Ralph A. Standbrook, Chairman of the County Legislature for County of Cayuga, New York; the County of Seneca, New York; Robert W. Hayssen, Chairman, Board of Supervisors for County of Seneca, New York; and the Miller Brewing Company, representing itself and a class of landowners.

In addition, a number of state and local officials, agencies, and other entities, as well as private landowners, were identified as defendants-appellants/cross-appellees below, including AT&T; Harry F. Amidon; Town of Aurelius, New York; Village of Aurora, New York; Floyd Baker; Marjorie Baker; William H. Bancroft; Mary Barnes; John Bartow, Director, New York State Environmental Facilities Corp.; Howard Bellman; Norma Bilack, Clerk, Town of Springport, New York; Howard Birdsall; Jeanne Birdsall; Joseph H. Boardman, Commissioner of Transportation; David Brooks, Clerk, Town of Ledyard, New York; Nancy E. Carey, Member of the Board of

Directors, New York State Thruway Authority; Timothy S. Carey, Trustee, Power Authority for the State of New York; Bernadette Castro, Commissioner of Parks and Recreation; Village of Cayuga, New York; Louis P. Ciminelli, Trustee, Power Authority for the State of New York; Consolidated Rail Corp.; John J. Conway; Willis M. Cosad; Erin M. Crotty, Commissioner of Environmental Conservation and Chairman of Board of Directors, New York State Environmental Facilities Corp.; Leo Davids, Jr., Supervisor, Town of Varick, New York; Randy Deal; Lawrence F. DiGiovanna, Director, New York State Environmental Facilities Corp.; Gerard D. DiMarco, Trustee, Power Authority for the State of New York; Division of General Services of the Executive Department of the State of New York; Eisenhower College of the Rochester Institute of Technology; Dorothy Engst; Wesley Engst; Town of Fayette; John H. Fenimore, Adjutant General, New York State Division of Military and Naval Affairs; Earl E. Fox; Robert Freeland, Mayor of Village of Seneca Falls, New York; Jeanne Freier; Louis Freier; Frederick Gable; Kenneth Gable; Glenn S. Goord, Commissioner of Correctional Services; Frank A. Hall, New York State Division of Youth; William C. Hennessy; Willis M. Hoster; J. Souhan & Sons, Inc; John A. Johnson, Commissioner, Office of Children and Family Services; Edwin Kelly; Ellen Kelly; Victoria S. Kennedy, Director, New York State Environmental Facilities Corp.; John L. King; Gail Kirk; William J. Kirk; David L. Koch; Henry Wm. Koch; Gordon Lambert; Grace Lambert; Town of Ledyard; Lehigh Valley Railroad; George G. Markel; Grace Martin; Leon Martin; Thomas B. Masten, Jr; William F. McCarthy, Director, New York State Environmental Facilities Corp.; Frank S. McCullough, Trustee, Power Authority for the State of New York; James W. McMahon, Superintendent, Division of the New York

State Police of the Executive Department of the State of New York; Frank P. Milano, Director, New York State Environmental Facilities Corp.; Richard P. Mills, Commissioner, New York State Education Department and Commissioner, State University of New York; Town of Montezuma; Mari B. Mosher; Ralph E. Mosher; Thomas J. Murphy, Executive Director, Dormitory Authority of the State of New York; New York State Department of Corrections; New York State Department of Health; New York State Department of Mental Hygiene; New York State Department of Transportation; New York State Department of Environmental Conservation; New York State Division for Youth; New York State Division of Military and Naval Affairs; New York State Division of State Police; New York State Education Department; New York State Electric & Gas Corp.; New York State Environmental Facilities Corp.; New York State Facilities Development Corp.; New York State Office of Parks and Recreation; New York State Thruway Authority; New York Telephone Co.; Ferdinand L. Nicandri; June Nicandri; Antonia C. Novello, M.D., Commissioner of Health and Director, New York State Environmental Facilities Corp.; Emerson O'Connor; Leah O'Connor; Ted W. O'Hara; Jessica Olsowske; William Olsowske; David G. Palmer; George E. Pataki, Governor of the State of New York; F.H. Patterson; W. W. Patterson, Jr; Paul Perkins; Power Authority of the State of New York; Marilyn Proulx, Clerk, Town of Aurelius, New York; R.N. Patreal Corp.; John R. Riedman, Member of the Board of Directors, New York State Thruway Authority; Anna Rindfleisch; Kenneth J. Ringler, Commissioner, Division of General Services of the Executive Department of the State of New York; Ann W. Ryan, Clerk of Village of Union Springs, New York; Marilyn Salato, Clerk of Village of Cayuga, New York; Frank A. Saracino, Supervisor, Town of Seneca Falls, New

York; Arlene Saxton; George Saxton; Joseph J. Seymour, Trustee, Power Authority for the State of New York; Jacqueline Smith, Clerk, Town of Montezuma, New York; James Somerville, Town Supervisor, Town of Fayette, New York; George G. Souhan; Eliot Spitzer, New York State Attorney General; Bruce Stahl; State University of New York; State of New York; John Strecker; Victoria Strecker; Alberta Stuck; Millard Stuck; Benjamin Swayze; Victoria Swayze; Henry Tamburo; Louis R. Tomson, Chairman and Member of the Board of Directors, New York State Thruway Authority; Town of Seneca Falls, New York; Town of Springport, New York; Ronald Tramontano, Director, New York State Environmental Facilities Corp.; Town of Varick, New York; Village of Seneca Falls, New York; Village of Union Springs, New York; W.W. Patterson, Inc; Clifford Waldron; Wells College; Robert E. White; and Lelia M. Wood Smith, Director, New York State Environmental Facilities Corp.



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